

## Message Text

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ACTION EUR-12

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FM AMEMBASSY OTTAWA  
TO SECSTATE WASHDC PRIORITY 3272  
INFO AMCONSUL MONTREAL  
ALL OTHER AMCONSULS CANADA

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CORRECTED COPY TEXT PARA 1

E.O. 11652: GDS  
TAGS: PFOR, CA  
SUBJECT: POSSIBLE FEDERAL GOVERNMENT MOVES TO COUNTER  
PARTI QUEBECOIS LANGUAGE PROGRAM

1. BEGIN SUMMARY: PENDING QUEBEC'S PROMULGATION OF IM-  
PLEMENTING LEGISLATION (EXPECTED APRIL 27), PM TRUDEAU  
HAS LEVELED GENERAL CRITICISM AT QUEBEC WHITE PAPER ON  
LANGUAGE, BUT HE HAS NOT INDICATED HOW FEDERAL GOVERNMENT  
MIGHT RESPOND TO LEGISLATION. FEDERAL RESPONSE, ACCORD-  
ING TO EMBASSY ESTIMATES COULD BE OF THREE GENERAL TYPES.  
FIRST, IT COULD CHALLENGE LEGISLATION DIRECTLY THROUGH  
DISALLOWANCE OR RESERVATION PROCEDURES OR THROUGH CONSTI-  
TUTIONAL CHALLENGE IN SUPREME COURT. SECOND, IT COULD ACCEPT  
AND GIVE TACIT APPROVAL OF LEGISLATION. THIRD, IT COULD CON-  
TENT ITSELF WITH INDIRECT PRIVATE CITIZEN AND/OR DIRECTING  
CROWN CORPORATIONS TO IGNORE LEGISLATION. IN VIEW OF RISKS  
INVOLVED WITH FIRST TWO OPTIONS, TRUDEAU IS LIKELY TO  
TEMPORIZE, LAUNCHING INDIRECT CHALLENGES WHERE FEASIBLE.  
END SUMMARY.

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2. PM TRUDEAU HAS ADOPTED A TWO-PRONGED APPROACH TO THE  
PARTI QUEBECOIS (PQ) GOVERNMENT'S WHITE PAPER ON LANGUAGE  
IN QUEBEC. FIRST, HE HAS VERY GENERALLY ATTACKED THE  
DOCUMENT AS "REGRESSIVE", SIGNALLING A STEP BACKWARD  
TOWARDS AN INGROWN, ETHNOCENTRIC SOCIETY. SECOND, HE HAS  
CAREFULLY AVOIDED REVEALING ANY SPECIFIC RESPONSE THE  
FEDERAL GOVERNMENT MIGHT BE PLANNING, POINTING OUT THAT

IMPLEMENTING LEGISLATION WILL HAVE TO BE TABLED BY THE QUEBEC GOVERNMENT (EXPECTED APRIL 27). THIS APPROACH SERVES TRUDEAU'S PURPOSES SINCE IT ALLOWS HIM TO CASTIGATE THRUST OF THE WHITE PAPER WHILE IT BUYS TIME FOR CONSIDERATION OF POSSIBLE FEDERAL RESPONSES TO LEGISLATION.

3. FROM DISCUSSIONS WITH FEDERAL OFFICIALS INVOLVED, WE ANTICIPATE FEDERAL REACTION TO LEGISLATION COULD FALL INTO ONE OF THESE GENERAL CATEGORIES: DIRECT CHALLENGE; ACCEPTANCE AND TACIT APPROVAL OF THE LEGISLATION; OR TEMPORIZING WITH INDIRECT ATTACK. DISCUSSION OF THESE OPTIONS FOLLOWS.

#### 4. DIRECT ATTACK

A) DISALLOWANCE AND RESERVATION -- PROVINCIAL LEGISLATION MAY BE "DISALLOWED" AND RENDERED VOID BY A CABINET ORDER-IN-COUNCIL UPON RECOMMENDATION OF THE MINISTER OF JUSTICE, OR IT MAY BE NEGATED THROUGH SO-CALLED RESERVATION UNDER WHICH A LIEUTENANT GOVERNOR REFUSES TO SIGN A PROVINCIAL ACT, RESERVING IT FOR THE CONSIDERATION OF THE GOVERNOR-IN-COUNCIL. BOTH HAVE BECOME ANACHRONISMS, DISALLOWANCE LAST HAVING BEEN USED IN 1943, FOR EXAMPLE. GENERAL FEELING IS THAT THESE ARE ARBITRARY METHODS OF TESTING POSSIBLY ULTRA VIRES PROVINCIAL LEGISLATION, WHICH ARE BEST REVIEWED IN THE COURTS.

5. IT IS UNLIKELY THAT TRUDEAU WILL ADOPT EITHER ROUTE IN  
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DEALING WITH QUEBEC LANGUAGE LEGISLATION. SINCE BOTH ARE SEEN AS EXTREME MEASURES FROM A DISTANT PAST, USE OF EITHER WOULD GENERALLY BE VIEWED, PARTICULARLY IN QUEBEC, AS DRACONIAN OVER-REACTION. QUEBECOIS, EVEN OF A MODERATE CAST, WOULD LIKELY RESENT THEIR USE AND VIEW SUCH ACTION AS YET ANOTHER IN A LONG LINE OF OTTAWA/ENGLISH ATTACKS ON THE FRENCH FACT IN QUEBEC. SHOULD TRUDEAU ADOPT EITHER METHOD, IT COULD WELL CAUSE A "THROWING THE BABY OUT WITH THE BATH WATER" SITUATION IN WHICH MANY UNCOMMITTED QUEBECOIS COULD BE DRIVEN INTO THE ARMS OF THE P.Q.

6. B) JUDICIAL CHALLENGE -- THE FEDERAL GOVERNMENT MIGHT CONTENTEND THAT CERTAIN ELEMENTS OF THE QUEBEC LANGUAGE LEGISLATION ARE IN VIOLATION OF THE BRITISH NORTH AMERICA ACT (BNA). A FEDERAL CHALLENGE WOULD ALLOW MATTER TO BE HEARD DIRECTLY IN THE SUPREME COURT OF CANADA; NO APPELLATE PROCEDURE WOULD BE NECESSARY. THE CHALLENGE, IF SUCCESSFUL, WOULD NEGATE ONLY THOSE PROVISIONS WHICH WERE CON-

TESTED AND NOT THE ENTIRE LANGUAGE BILL.

7. ASSUMING IMPLEMENTING LEGISLATION IS ESSENTIALLY SAME AS IN WHITE PAPER PROVISIONS, IT APPEARS THAT ONLY TWO ELEMENTS OF SUCH LEGISLATION MAY BE UNCONSTITUTIONAL; ONE PROVIDING THAT NATIONAL ASSEMBLY BILLS WILL BE PASSED AND ASSENTED TO IN FRENCH ONLY; THE OTHER THAT JUDICIAL JUDGMENTS BE IN FRENCH TO BE OFFICIAL. THE WHITE PAPER PROVIDES THAT "BILLS WILL BE PASSED AND ASSENTED TO IN FRENCH ONLY. THIS WILL ALSO APPLY TO JUDGMENTS HANDED DOWN IN QUEBEC BY THE COURTS AND OTHER JUDICIAL BODIES; ONLY THE FRENCH TEXT WILL BE OFFICIAL."

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8. THESE ELEMENTS COULD BE FOUND IN VIOLATION OF SECTION 133 OF THE BNA ACT WHICH PROVIDES: "EITHER ENGLISH OR FRENCH LANGUAGE MAY BE USED BY ANY PERSON IN DEBATES OF HOUSES OF PARLIAMENT OF CANADA AND OF HOUSES OF LEGISLATURE OF QUEBEC; AND BOTH THOSE LANGUAGES SHALL BE USED IN RESPECTIVE RECORDS AND JOURNALS OF THOSE HOUSES; AND EITHER OF THOSE LANGUAGES MAY BE USED BY ANY PERSON OR IN ANY PLEADING OR PROCESS IN OR ISSUING FROM ANY COURT OF CANADA ESTABLISHED UNDER THIS ACT, AND IN OR FROM ALL OR ANY OF THE COURTS OF QUEBEC. THE ACTS OF THE PARLIAMENT OF CANADA AND OF LEGISLATURE OF QUEBEC SHALL BE PRINTED AND PUBLISHED IN BOTH THOSE LANGUAGES."

9. ANTICIPATING THERE MAY BE CONTROVERSY OVER THESE PROVISIONS, THE WHITE PAPER POINTS OUT THAT: "SECTION 133 OF THE BRITISH NORTH AMERICAN ACT DOES, OF COURSE, ALLOW

USE OF BOTH ENGLISH AND FRENCH IN NATIONAL ASSEMBLY AND IN THE COURTS, AND REQUIRES THAT STATUTES BE PUBLISHED IN BOTH LANGUAGES. HOWEVER, PARAGRAPH 1 OF SECTION 92 OF THE SAME ACT AUTHORIZES THE PROVINCES TO AMEND THEIR INTERNAL CONSTITUTIONS EXCEPT AS REGARDS THE OFFICE OF THE LIEUTENANT GOVERNOR. MOST JURISTS, PARTICULARLY DURING CONSULTATIONS WHICH TOOK PLACE AT TIME OF THE GENDRON COMMISSION, CONFIDENTIAL

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HAVE EXPRESSED THE OPINION THAT WHEN APPLIED TO QUEBEC, SECTION 133 FORMS PART OF THE INTERNAL CONSTITUTION OF THE PROVINCE AND MAY BE AMENDED BY THE NATIONAL ASSEMBLY."

10. THERE ARE, OF COURSE, ADVANTAGES AND DISADVANTAGES TO BE WEIGHED BY TRUDEAU AS HE CONSIDERS CHALLENGING THESE PROVISIONS OF LANGUAGE BILL. MOST IMPORTANT IS QUESTION WHETHER A CHALLENGE WOULD BE SUCCESSFUL; THE LEGISLATION MIGHT BE DECLARED CONSTITUTIONAL. (AN OFFICIAL IN THE FEDERAL/PROVINCIAL RELATIONS OFFICE OF THE FEDERAL GOVERNMENT TOLD AN EMBASSY OFFICER CANDIDLY THAT HIS OFFICE BELIEVED THESE PROVISIONS WERE NOT UNCONSTITUTIONAL.) THE FEDERAL AUTHORITIES PRESUMABLY WILL CONSIDER THIS ASPECT CAREFULLY BEFORE PROCEEDING SINCE AN UNSUCCESSFUL CHALLENGE WOULD BE A MAJOR PSYCHOLOGICAL DEFEAT FOR THE FEDERALIST CAUSE. FURTHER, AS NOTED ABOVE, EVEN A SUCCESSFUL CHALLENGE WOULD NEGATE ONLY A VERY SMALL SEGMENT OF THE LEGISLATION. JURIDICAL MOVE OF THIS KIND, ONE COMMENTATOR HAS ASSERTED, WOULD FAIL TO "CAPTURE THE IMAGINATION OF QUEBECKERS AS A COMPELLING CAUSE". FINALLY, SOME QUEBECKERS MIGHT RESENT ANY OTTAWA INTERFERENCE IN THE QUEBEC LEGISLATIVE PROCESS AND EVEN MODERATE, UNCOMMITTED QUEBECOIS MIGHT BE MOVED CLOSER TO PQ AS A RESULT.

11. ON PLUS SIDE, A JUDICIAL CHALLENGE WOULD CONVINCE MANY CANADIANS THAT TRUDEAU WAS FINALLY "DOING SOMETHING" TO COUNTER PQ INCURSIONS. CONVERSELY, A FAILURE TO ACT WHERE QUESTIONABLE CONSTITUTIONALITY WAS INVOLVED COULD ENCOURAGE THE PQ TO TABLE EVEN MORE PROVOCATIVE LEGISLATION, IN EFFECT DARING THE FEDERAL GOVERNMENT TO INTERVENE. IF THE FEDERAL GOVERNMENT DID INTERVENE, THE PQ COULD CLAIM ANTI-QUEBEC, ANTI-FRENCH INTERFERENCE FROM OTTAWA; IF IT FAILED TO INTERVENE ON THESE OCCASIONS, THE PQ MIGHT BE ABLE IN TIME TO ACHIEVE DE FACTO INDEPENDENCE IN ALL BUT NAME.

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12. IN VIEW UNCERTAINTIES INVOLVED, WE DOUBT TRUDEAU WILL CHOOSE THE JURIDICAL CHALLENGE ROUTE. FROM ALL INDICATIONS, CONSTITUTIONAL QUESTION IS TOO CLOUDY TO ALLOW FOR ANY DEGREE OF CONFIDENCE ABOUT OUTCOME OF COURT CASE; AS MENTIONED ABOVE, AN UNSUCCESSFUL CHALLENGE COULD BE CONSIDERABLY WORSE THAN NO CHALLENGE AT ALL.

13. ACCEPTANCE AND TACIT APPROVAL OF THE LEGISLATION -- THIS COURSE OF ACTION SEEMS UNLIKELY IN VIEW OF HIGHLY CRITICAL REMARKS TRUDEAU HAS ALREADY MADE ABOUT THE WHITE PAPER. IT IS, HOWEVER, A POSSIBILITY. IF IMPLEMENTING LEGISLATION CONTAINS MODIFICATIONS OF THE WHITE PAPER PROVISIONS (LEVESQUE HAS ALREADY SUGGESTED SOME SOFTENING OF RULES FOR LANGUAGE INSTRUCTION), TRUDEAU MAY BE TEMPTED TO PROCLAIM THAT PUBLIC PROTESTS AND CRITICISM HAVE BEEN HEARD AND TAKEN SERIOUSLY AND THAT THE LEGISLATION WAS ACCEPTABLE. THIS CONCILIATORY POSTURE COULD HAVE SOME APPEAL TO MODERATE QUEBEC FRANCOPHONES, BUT IT WOULD RISK HOSTILE REACTION AMONG ANGLO CANADIANS IN QUEBEC AND ELSEWHERE, WHO MIGHT VIEW THIS ATTITUDE BY THE PM AS A SELLOUT TO QUEBEC. THIS TYPE OF REACTION COULD PERMANENTLY DAMAGE TRUDEAU'S STANDING ACROSS CANADA. THUS, WE DOUBT TRUDEAU WILL ADOPT THIS COURSE OF ACTION UNLESS THE PQ MODIFIES THE WHITE PAPER SIGNIFICANTLY DURING THE COURSE OF THE DEBATE ON THE LANGUAGE BILL.

14. TEMPORIZING WITH INDIRECT ATTACK -- WITH THIS APPROACH, TRUDEAU WOULD SIMPLY CONTINUE AS BEFORE, SHARPLY

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CRITICIZING LANGUAGE BILL, BUT MAKING NO MOVE TO CHALLENGE IT DIRECTLY. THIS APPROACH COULD, HOWEVER, BE CONSIDERABLY MORE THAN A "DO NOTHING" POLICY IF IT ALSO INVOLVED SEVERAL AREAS OF INDIRECT ATTACK. FEDERAL GOVERNMENT COULD, FOR EXAMPLE, ENCOURAGE AND PERHAPS ACTIVELY ASSIST A CITIZENS' CHALLENGE TO THE CONSTITUTIONALITY OF THE LEGISLATION (BILL 22 OF FORMER BOURASSA GOVERNMENT WAS CHALLENGED IN THIS MANNER). THIS TACTIC WOULD AVOID THE IMPRESSION OF BULLYING FROM OTTAWA, WOULD CREATE AN IMAGE OF AN IRATE CITIZENRY PROTECTING ITS LANGUAGE RIGHTS, AND WOULD, OF COURSE, TEST CONSTITUTIONALITY OF THE LEGISLATION. IT WOULD, HOWEVER, BE A TIME-CONSUMING PROCESS SINCE IT WOULD REQUIRE USE OF FULL APPELLATE PROCEDURE WITH CASE STARTING IN A LOWER COURT AND WORKING ITS WAY FINALLY TO SUPREME COURT.

15. OTTAWA WOULD HAVE OTHER WAYS IN WHICH TO LAUNCH AN INDIRECT ATTACK. IT COULD, FOR EXAMPLE, DIRECT CROWN CORPORATIONS TO IGNORE THE LAW. SINCE CROWN CORPORATIONS (AND FEDERAL INSTALLATIONS) REPRESENT A NOTICEABLE SEGMENT OF LABOR SECTOR IN QUEBEC, PARTICULARLY IN URBAN AREAS, SUCH A DIRECTIVE WOULD REPRESENT A CONTINUING, VISIBLE CHALLENGE TO PQ GOVERNMENT'S ABILITY TO BE MASTERS IN CONFIDENTIAL

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THEIR OWN HOUSE.

16. AT SAME TIME, TRUDEAU AND OTHER FEDERAL MINISTERS COULD TAILOR THEIR SPEECHES TO PLAY ON FEARS OF MODERATE QUEBECOIS, DRUMMING IN IMPRESSION THAT LANGUAGE LEGISLATION ONLY FIRST STEP IN AUTHORITARIAN AND LEFTIST PATTERN OF PQ GOVERNMENT. THIS SEMI-SMEAR APPROACH COULD BE HIGHLY EFFECTIVE AMONG SOME MIDDLE CLASS ELEMENTS OF QUEBEC SOCIETY.

17. IN OUR VIEW, TEMPORIZING APPROACH IS ONE TRUDEAU IS MORE LIKELY TO ADOPT. LANGUAGE PAPER TOO ARTFULLY DRAFTED TO PRESENT TRUDEAU WITH A CLEAR TARGET. EVEN SOME CONFIRMED FEDERALISTS CONSIDER IT GENERALLY A FAIR DOCUMENT, REASONABLE IN THE CIRCUMSTANCES. NICHOLAS GWYN, ASSISTANT SECRETARY TO THE CABINET FOR FEDERAL/PROVINCIAL RELATIONS (STUDIES AND RESEARCH), TOLD EMBASSY OFFICERS HE FELT WHITE PAPER REMARKABLY WELL-SUITED TO THE SITUATION. DAVIDSON DUNTON, FORMER CO-CHAIRMAN OF COMMISSION ON BILINGUALISM AND BICULTURALISM, HAS REPORTEDLY ASSERTED THAT ANGLOPHONES SHOULD OPENLY SUPPORT THRUST OF WHITE PAPER, WHICH LARGELY CONSISTENT WITH THINKING OF COMMISSION.

18. TEMPORIZING DOES NOT INVOLVE RISKS INHERENT IN OTHER  
OPTIONS NOR DOES IT IN ANY WAY PREVENT LATER HOLD ACTION  
BY TRUDEAU ON AN ISSUE BETTER SUITED FOR MAJOR BATTLE  
WITH PQ, E.G., POSSIBLE PQ MOVES ON IMMIGRATION, COMMUNI-  
CATIONS OR OTHER AREA IN WHICH CONSTITUTIONAL INFRINGEMENT  
MAY BE MORE CLEAR. DUEMLING

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## Message Attributes

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